STATE OF MICHIGAN

COURT OF APPEALS

MANSFIELD PATTERSON, JR., Personal Representative of the Estate of MANSFIELD PATTERSON V, Plaintiff-Appellee,	UNPUBLISHED August 21, 2014
v	No. 316100 Wayne Circuit Court
AUTO CLUB INSURANCE ASSOCIATION, Defendant-Appellant.	LC No. 11-013702-CK

Before: RIORDAN, P.J., and DONOFRIO and, BOONSTRA JJ.

PER CURIAM.

Defendant appeals as of right the trial court's entry of a judgment notwithstanding the verdict in favor of plaintiff. Because the jury was free to conclude that plaintiff failed to meet his burden in establishing Mansfield Patterson V's address, we reverse.

This case arises out of the October 5, 2009, automobile accident that led to the death of Mansfield Patterson V (hereafter "Mansfield"). At trial, the only issue litigated was whether Mansfield resided with his aunt and uncle, the Hubbards, who had an automobile insurance policy that covered "resident relatives."

After the jury concluded that Mansfield did not live with the Hubbards at the time of the accident, plaintiff moved for judgment notwithstanding the verdict. Interestingly, the trial court actually agreed with defendant—that Mansfield's mother, who was one of several witnesses that testified that Mansfield lived with the Hubbards, was "not worthy of belief." But the trial court took this a step further and also decided that the various documents that Mansfield's mother ostensibly filled out[1] before any litigation was contemplated in the current case were "completely unreliable and not worthy of belief" as well. As a result, the trial court concluded that, with

[1] At trial, there were several exhibits that purportedly were written by Mansfield's mother or were created with information supplied by her, which indicated that Mansfield did not live with the Hubbards at the time of the accident. At trial, she initially claimed that she did not know if it was her signature on those documents but then later asserted that she never signed the forms.

those documents being the only evidence to suggest that Mansfield lived elsewhere, no reasonable person could conclude that Mansfield resided anywhere but with the Hubbards at the time of the accident.

A trial court's decision on a motion for judgment notwithstanding the verdict is reviewed de novo. *Craig v Oakwood Hosp*, 471 Mich 67, 77; 684 NW2d 296 (2004). Pursuant to MCR 2.610(A)(1), a party can move to have the verdict and judgment set aside and to have a judgment entered in the moving party's favor. Appellate courts must review the evidence and all legitimate inferences from the evidence in the light most favorable to the nonmoving party. *Id.* "Only when the evidence viewed in this light fails to establish a claim as a matter of law is the moving party entitled to judgment notwithstanding the verdict." *Id.* (quotations mark omitted). "The trial court cannot substitute its judgment for that of the factfinder, and the jury's verdict should not be set aside if there is competent evidence to support it." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

The only question is whether competent evidence existed to support the jury's conclusion that Mansfield did not reside at the Hubbards' household at the time of his car accident on October 5, 2009. Plaintiff was seeking benefits under Daniel Hubbard's insurance policy, which supplied uninsured motorist coverage to "resident relative[s]," which includes any "person who is a resident of your household related to you by blood, marriage." However, what constitutes a "resident" is not defined by the policy. An insurance policy is a contract, and a court must determine what the parties agreed to in the policy in order to determine if a policy covers a particular accident. *Fire Ins Exchange v Diehl*, 450 Mich 678, 683; 545 NW2d 602 (1996), overruled in part on other grounds *Wilkie v Auto-Owners Ins Co*, 469 Mich 41 (2003). Where the language of the policy is clear, courts are bound by the specific language set forth in the policy. *Heniser v Frankenmuth Mutual Ins Co*, 449 Mich 155, 160; 534 NW2d 502 (1995). This Court must interpret the terms of the policy in accordance with their commonly used meaning if the terms are not defined. *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 404; 531 NW2d 168 (1995), abrogated by *Frankenmuth Mutual Ins Co v Masters*, 460 Mich 105 (1999).

In Michigan, a "resident" is, often, legally synonymous with "domicile." See *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 498-500; 835 NW2d 363 (2013). The meaning of "resident" "may vary according to the circumstances." *Workman v DAIIE*, 404 Mich 477, 495 274 NW2d 373 (1979). In *Workman*, the Supreme Court determined that courts should evaluate whether a person is a resident of a household by balancing the following relevant factors:

> (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. [*Id.* at 496-497 (internal citations omitted).]

"In considering these factors, no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others." *Id.* at 496.

Furthermore, this Court has identified other factors to be considered in determining where a person resides: the person's mailing address, whether the person maintains possessions at the insured's home, whether the insured's address appears on the person's driver's license, whether a bedroom is maintained in the insured's home for that person, and whether that person is dependent on the insured for support and assistance. *Williams v State Farm Mut Auto Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993).

At trial, every witness testified that Mansfield resided with the Hubbards on October 5, 2009. This same testimony included the fact that Mansfield maintained a bedroom and kept his belongings at the Hubbard home. However, it is also true that the evidence established that Mansfield never received any mail at the Hubbard home. Valerie Hubbard, his aunt, testified that Mansfield had never received "a single piece of mail," even though he had resided in her home from the time he was 17 or 18 years old until the time of his death at 20 years of age. Valerie explained that Mansfield never got any mail because "[h]e was a young boy." Clearly, the jury could have found this testimony very suspect, especially when considering that Mansfield's 20-year-old cousin, who also lived with the Hubbards, testified that she received mail addressed to her at the Hubbard household. Further, there was testimony that Mansfield had a job, which creates a strong inference that he would have likely received, at a minimum, tax information through the mail. This latter evidence supports the jury's conclusion that Mansfield did not actually reside with the Hubbards.

Defendant's theory at trial was that Mansfield's family started to claim that he lived with the Hubbards only after plaintiff's attorney got involved in the matter and they learned that the only way to recover any benefits was to have Mansfield live there. While defendant did not call any witnesses at trial, it pointed to the lack of a single piece of tangible evidence indicating that Mansfield ever lived at the Hubbard household: there was no state ID card with an address, there was no mail, there were no school records, there were no tax records. Defendant did provide multiple exhibits, all of which were allegedly signed by Mansfield's mother or were created with input from her, that showed Mansfield as having an address other than the one with the Hubbards. Plaintiff's death certificate listed his address as 15 Gratiot Court, Mt. Clemens, where Mansfield's mother resided. An application for bodily injury benefits filed after Mansfield's accident specifically provided that Mansfield lived with his grandfather and plaintiff at 258 Cass Avenue in Mt. Clemens. The petition for appointment of guardian of an incapacitated individual provided that Mansfield's address was 15 Gratiot Court, Mt. Clemens. Also, a transcript of a conversation between a representative of Data Surveys and Mansfield's mother showed that Mansfield's mother specifically was asked where Mansfield lived, and she said that he lived with his grandfather at 258 Cass Avenue, Mt. Clemens. Mansfield's mother also told the representative that Mansfield had lived there for a few months. Also, Mansfield's mother said that his belongings were both at her home on Gratiot and at the Cass Avenue address. She also told the representative that Mansfield spent every night over at his grandfather's home. The trial court was correct in noting that the mother's testimony created serious credibility issues, but such a consideration is for the jury. *Moore*, 279 Mich App at 202; *King v Reed*, 278 Mich App 504, 522; 751 NW2d 525 (2008). Moreover, even if it was conclusively established that Mansfield's mother's testimony *at trial* was not credible, such a situation does not support the

trial court's view that her statements made *near the time of the accident*, which according to defendant was before she would have had any motive to lie, also were not credible.

All of this evidence, when viewed in the light most favorable to the nonmoving party, i.e., defendant, supported the jury's conclusion that Mansfield did not live with the Hubbards. It is important to note that plaintiff had the burden of proof in this matter. *Children of Chippewa, Ottawa & Potawatomy Tribes v Regents of Univ of Mich*, 104 Mich App 482, 497; 305 NW2d 522 (1981). Accordingly, plaintiff had to prove by a preponderance of the evidence that Mansfield lived with the Hubbards at the time of the accident. With the evidence presented (or lack thereof), the jury reasonably could have accepted defendant's theory that the family orchestrated their testimony only after learning that the only way to collect insurance benefits was to have Mansfield living with the Hubbards. The jury could have found it extremely significant that not only did plaintiff fail to provide a single piece of tangible evidence establishing Mansfield's residence, but the only documentary evidence submitted showed that Mansfield lived elsewhere. Weighing evidence and deciding the credibility of witnesses are the provinces of the jury, not the trial court. *Moore*, 279 Mich App at 202; *King*, 278 Mich App at 522. Thus, the trial court improperly granted plaintiff's motion for judgment notwithstanding the verdict because, with zero corroborating evidence, the jury rationally could have disbelieved the proffered testimony of the family.

Reversed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra